

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>ELIGIBILITY, CERTIFICATION, AND REPORTING REQUIREMENTS FOR ELIGIBLE TELECOMMUNICATIONS CARRIERS AND RELATED CONFIDENTIALITY PROVISIONS [199 IAC 1 and 39]</p>	<p>DOCKET NO. RMU-2014-0002</p>
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ORDER ESTABLISHING FILING DATE FOR ADDITIONAL COMMENTS

(Issued January 23, 2015)

On July 17, 2014, the Iowa Utilities Board (Board) issued an order commencing a rule making proceeding to update the Board's rules governing the Board's designation of telecommunications as eligible to receive support from the federal Universal Service programs. The proceeding was identified as Docket No. RMU-2014-0002. The proposed amendments were published in the Iowa Administrative Bulletin on August 6, 2014, as ARC 1563C. The Board received four sets of written comments responding to the proposed amendments and conducted an oral comment proceeding on October 28, 2014.

The Board proposed to adopt new rule 39.3 which specified requirements for applying for a designation by the Board as an eligible telecommunications carrier (ETC). As proposed, subrule 39.3(1) states, in part, that an "ETC designation is not transferable. Where a telecommunications carrier acquires another carrier with an

ETC designation, through a sale or transfer, the acquiring company must apply for an ETC designation." Some of the written comments addressed that provision.

The Iowa Communications Alliance (ICA) suggested that the Board should make a distinction between the structure of the transaction and the circumstances of the transferring company and the acquiring company. ICA suggested that where an existing ETC purchases another entity that holds an ETC designation and the purchased entity is folded into the acquiring company's holding company, the ETC status does transfer and there would be no need to apply for a new ETC designation. In this situation, ICA states that the rules could require the acquiring carrier to notify the Board of the transfer and certify that the acquiring carrier will assume the ETC status of the acquired entity and responsibilities in the acquired service area.

ICA also suggested that where an ETC acquires an entity that does not have an ETC designation, but the acquiring carrier wishes to obtain ETC status for the new study area, the acquiring carrier should be required to apply for designation. And where one carrier acquires a company with an ETC designation but does not want to assume ETC status for all or a portion of the acquired entity's designated service area, ICA suggested it would be appropriate for the acquiring carrier to comply with the Board's requirements for relinquishing ETC designation. Finally, ICA suggested that a company with an ETC designation that purchases another ETC should be allowed to adopt the acquired entity's network improvement plan.

Windstream also commented on the proposal, stating in written comments that the language is not clear as to whether the requirement applies if the acquiring

company already has an ETC designation. Windstream asked the Board to clarify this issue and suggested that the rule include an exception for a carrier that already has been designated as an ETC. Windstream explained that where the acquiring carrier is already an ETC, the ETC designation of the seller is not being transferred – the selling entity's customers are being transferred. The acquiring carrier has already been through the designation process and is bound by the laws regarding the obligations of an ETC. Windstream suggested that the Board revise the proposed amendment to allow this exception.

There was discussion at the oral comment proceeding about the proposed provision that ETC designations are not transferable. The Board asked whether an ETC designation transfers upon the acquisition of a company depends on the type of transaction, i.e., a stock versus an asset transaction. ICA stated that at the federal level, there has been guidance suggesting that in cases involving a carrier acquiring the stock of an ETC, the ETC status does not automatically transfer as part of that transaction. ICA suggested that in the context of a program in which federal authority has been delegated to the states, the federal guidance is instructive. According to ICA, if the Board adopts the federal approach, the Board should consider what will be expected of participants in a stock transaction. With respect to asset transactions, ICA stated it is more clear that ETC status is not an asset that one entity can transfer to another. ICA observed that use of the term "transfer" may be inarticulate if the question is whether, where an ETC acquires additional properties in Iowa, those

properties can be folded into the acquiring company's existing designation versus taking the ETC designation from the selling entity.

In response to the written and oral comments and the request for clarification about the statement that ETC designations are not transferable, the Board has drafted a new subrule which is intended to give guidance about Board expectations when a change in corporate ownership or control involves at least one carrier with an ETC designation. The Board has not attempted to address every possible scenario that may arise, choosing instead to address the types of transactions that are most likely to involve ETC designations.

The revisions incorporate concepts discussed in written comments and at the oral comment proceeding, including notice to the Board of an acquisition and, where applicable, certification as to whether an acquiring carrier intends to assume the acquired carrier's ETC obligations. One of the revisions under consideration is based on the principle that ETC designations do not automatically transfer upon a change in ownership or control of an ETC; the Board must evaluate whether a previously-undesignated carrier satisfies the requirements for being designated as an ETC. The revisions also include a process by which existing ETCs can amend their designations to reflect changes to a service area resulting from an expansion of a service area.

Where one incumbent local exchange carrier (ILEC) that has been designated by the Board as an ETC acquires another ILEC-ETC, the new subrule instructs carriers to notify the Board and to certify that the acquiring carrier intends to amend

its designation by assuming the obligations of the acquired ETC. The revision also asks the acquiring carrier to indicate whether it is adopting the acquired carrier's network improvement plan. In this case, under Iowa Code § 476.20 and existing Board rules, the Board would conduct an SPU proceeding to approve the discontinuance of service by the carrier acquired in the transaction; the new subrule would require that the notice and certification be submitted in the application for approval of a proposed discontinuance of service.

Where a Lifeline-only ETC acquires another Lifeline-only ETC, the new subrule instructs the acquiring carrier to notify the Board of the acquisition and certify that the acquiring carrier intends to amend its designation to assume the acquired carrier's ETC obligations in the newly acquired service area. The acquired carrier is directed to follow the Board's rule on relinquishment of an ETC designation. In this case, the Board would issue an order amending the acquiring carrier's designation.

Where a non-ETC acquires an ETC and the acquiring carrier intends to serve as an ETC in the acquired service area, the new subrule instructs the acquiring carrier to file an application for ETC designation. The acquired carrier is directed to file a notice with the Board seeking to relinquish the carrier's ETC designation.

Finally, the new subrule instructs that where a telecommunications carrier that has been designated by the Board as an ETC intends to serve as an ETC in a new service area for the purposes of receiving support from the CAF Phase II auction or other similar purpose, or after acquiring a new service area pursuant to a transaction not subject to the provisions of Iowa Code § 476.20, the carrier must file a notice of

the expansion or acquisition and shall certify that the carrier intends to amend its designation to serve as an ETC in the new service area. In this case, the Board would issue an order amending the designation.

These ideas have been incorporated into new subrule 39(3), which reads as follows:

39.3(3) Amendments to ETC designations. ETCs may request that the board amend an existing ETC designation as provided in the following situations. Where the board approves of the amendment, the board will issue an order amending the designation.

a. ILEC transactions. Where an incumbent local exchange carrier that has been designated by the board as an ETC acquires another incumbent local exchange carrier with an ETC designation, through a sale or transfer, and the acquiring carrier intends to serve as an ETC in the newly acquired service area, the acquiring carrier must notify the board of the acquisition and certify that the acquiring carrier intends to amend its designation to assume the acquired carrier's ETC obligations. The certification also shall indicate whether the acquiring carrier intends to adopt the network improvement plan of the acquired carrier. The notice of acquisition and certification shall be filed at least 90 days before the acquired carrier discontinues service as part of an application for discontinuance of service filed pursuant to Iowa Code section 476.20. The acquired carrier shall comply with the requirements for relinquishing an ETC designation in 199—39.8.

b. Lifeline-only ETC transactions. Where a telecommunications carrier that has been designated by the board as a Lifeline-only ETC acquires another carrier that has been designated by the board as a Lifeline-only ETC, and the acquiring carrier intends to serve as a Lifeline-only ETC in the newly acquired service area, the acquiring carrier shall notify the board of the acquisition and certify that the acquiring carrier intends to amend its designation to assume the acquired carrier's ETC obligations. The notice and certification shall be filed using the carriers' ETA docket numbers at least 90 days before the acquired carrier will cease providing Lifeline service. The filing shall include copies of relevant documents filed with the FCC. The acquired carrier shall comply with the requirements for relinquishing an ETC designation in 199—39.8. The board will issue an order amending the designation.

c. Non-ETC acquires an ETC. Where a telecommunications carrier that has not been designated by the board as an ETC acquires a telecommunications carrier that has been designated by the board as an ETC, and the acquiring carrier intends to serve as an ETC in the newly-acquired service area, the acquiring carrier shall file with the board an application for designation as an

ETC as provided in 199—39.3. The acquired carrier shall comply with the requirements for relinquishing an ETC designation 199—39.8.

d. Other amendments. Where a telecommunications carrier that has been designated by the Board as an ETC intends to serve as an ETC in a new service area for the purposes of receiving support from the CAF Phase II auction or other similar purpose, or after acquiring a new service area pursuant to a transaction not subject to the provisions of Iowa Code § 476.20, the carrier shall file a notice of expansion or acquisition and shall certify that the carrier intends to amend its designation to serve as an ETC in the expanded service area. The board will issue an order amending the designation.

IT IS THEREFORE ORDERED:

Interested persons may file additional comments addressing the proposed new subrule discussed in this order on or before February 2, 2015.

UTILITIES BOARD

/s/ Elizabeth S. Jacobs

/s/ Nick Wagner

ATTEST:

/s/ Joan Conrad
Executive Secretary

/s/ Sheila K. Tipton

Dated at Des Moines, Iowa, this 23rd day of January 2015.